

L A M B E R T C O F F I N

ATTORNEYS

Sole Proprietor Businesses: Navigating the Covid19 Pandemic

**By John F. Lambert, Esq.
& Adrianna DeRice Vargo, Esq.**

www.lambertcoffin.com

1. *Access to Unemployment Insurance*

<https://www.maine.gov/unemployment/>

<https://reemployme.maine.gov/accessme/faces/login/login.xhtml>

The federal legislation provides the states the funds to pay additional unemployment benefits, up to 39 weeks in this year at \$600 a week.

As of April 28, the state of Maine had not yet established a plan for how to apply for the benefits. Check the above web sites regularly, apply on line and have the following information with you when you apply:

Federal Tax Return -1040 (2018 or 2019),
Schedule C- sole proprietor,
Schedule F- Farmers,
Schedule J— Farmers and Fishermen,
Schedule SE- Self-employment,
Schedule K-1- Partnerships and S-Corp

Also have the numbers for your bank account so the checks can be direct deposited. You will get your benefit quicker.

Eligibility:

Individuals are only entitled to benefits if they are no longer working through no fault of their own and that individual must be able and available to work.

The benefits are generally not payable to individuals who have the ability to telework with pay or who are receiving paid sick leave or other paid leave benefits.

Individuals receiving paid sick leave or other paid leave benefits for less than their customary work week may still be eligible for PUA.

The following are eligible;

- The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- A member of the individual's household has been diagnosed with COVID-19;
- The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- The individual has to quit his or her job as a direct result of COVID-19; or
- The individual's place of employment is closed as a direct result of the COVID-19 public health emergency. For purposes of determining eligibility for PUA,

2. *Health Insurance*

The enrollment period for the Affordable Care Act health exchanges has not been amended or extended. People can still qualify for a special enrollment period if they experience a qualifying life event (QLE), such as losing their coverage, getting married, divorced, having a baby, etc. in the past 60 days. They can also seek Medicaid or CHIP (for their kids) at any time as these are needs-based programs.

Congress did establish a provider relief fund, which is essentially a direct grant from HHS to providers based on their size, etc., to help them stay open during these crazy times. The provider who takes the money agrees not to have any difference in out of pocket costs between in-network and out of network providers. The goal is to reduce barriers for people to seek treatment and testing for COVID.

Many insurers are providing free diagnostic testing for COVID and waiving co-pays or not applying the costs to deductibles. AHIP, the insurance trade group, is pushing its members to provide no-cost testing, waive prior authorizations for testing and treatment,

expanding telehealth for COVID (and especially non-COVID treatment). This, again, is to reduce barriers for those seeking treatment and testing.

Welcome to the world of telemedicine.

3. ***Business Interruption Insurance***

The business owners' policy can contain provisions that, in certain circumstances, would provide business interruption coverage that could consist of net profits/loss before taxes, normal operating expenses (including payroll expenses), and rental value.

Usually, any business interruption (or "business income") coverage under the business owners' policy arises the property coverage portion of the policy. Generally, any coverage for property damage must be due to "direct physical loss of or damage to Covered Property at the premises...caused by or resulting from any Covered Cause of Loss."

Many commercial policies contain contagious disease related exclusions which defeat coverage. Many carriers began adding these exclusions, which generally focus on either bacteria or both bacteria and viruses, in the wake of SARS several years ago.

A notable case from 2006 involved a company arguing that revenue lost due to a federal embargo concerning mad cow disease did qualify as a "direct physical loss" to property. *Source Food Tech., Inc. v. U.S. Fidelity & Guar. Co.*, 465 F.3d 834 (8th Cir. 2006). The plaintiff argued that it could not transport even its beef that had been uncontaminated, because it was essentially being treated as though it was physically contaminated. As a result, the plaintiff lost the benefits of its ownership of the product. The Court found, however, that the inability to transport the product did not trigger coverage because it did not constitute a "direct physical loss." *Id.* at 838.

Again, if the physical premises of the business were to be contaminated, and non-use were to result from said contamination, there could be an argument for a covered loss. Not only am I very skeptical that coverage can be triggered under the business owners' policy language without that physical element, even if it were to be present, the virus exclusion would still likely defeat coverage.

4. ***Liability Insurance***

A. Workers' Compensation – Hopefully not applicable to sole proprietors, but be very careful on this subject. The individual who you may think is an independent contractor might be determined to be an employee. If someone contracts the disease by performing some of your "contract" work, they could claim to be an employee.

A ruling could mean that you owe WC benefits and might have huge consequences on payroll; minimum wage, overtime, payroll taxes, etc.

B. Homeowners - This policy will not help provide any protection for a claim that arises out of business or commercial activity, even if run out of your house.

- C. **Comprehensive General Liability** – This is a type of policy you need if you are concerned about a claim against you by a third party. For example, if your business activity causes someone to contract the virus, can they sue you?

It is far from clear if such claims will be covered.

5. *Increased Use of the Internet and Digital Options to Run Your Business Remotely*

- a. Using Facetime/Zoom/Conference Call platforms to run your business remotely
 - i. Estimates/Consultations using Facetime/Zoom/Photos to reduce in-person exposure.
 - ii. Checking in with vendors/independent contractors/customers
 - iii. Use password protection when available to keep conversations private and protected from hackers (known issue with Zoom)
- b. Convert from paper to digital record keeping
 - i. Can access from anywhere; more convenient when working from home or going back and forth between office and home
 - ii. If proper security measures are in place (passwords, firewalls, etc.), then more secure than paper records. Preserves customer confidential information and protects business confidential information
 - iii. Be mindful of only using a secure email program to transmit confidential customer information such as SSN's and credit card information

6. *Stimulus Package Options & Managing Receivables*

- a. Second wave of funds signed into law on 4/24 to add \$310 billion to Stimulus Package. Funds available on a first come, first-served basis.
 - i. \$250 Billion earmarked for Paycheck Protection Program (PPP) Loans
 - 1. Eligibility of self-employed individuals and independent contractors began on 4/10/2020
 - 2. Apply directly through an SBA approved Lender
 - a. Smaller local banks appear to have faster turn around times than larger national banks
 - b. Easier to manage loan application process when you are working with a banker you already know
 - 3. No collateral or personal guarantees required
 - 4. Loan origination fees are waived
 - 5. Loan amount up to 2.5 times average monthly 1099 income or net self-employment income over the past 12 months
 - 6. Loan proceeds may be forgiven in full if funds are spent on qualified expenses within 8 weeks of receiving loan proceeds
 - a. Qualified Expenses Include
 - i. At least 75% must be spent on 1099 or self-employment income capped at \$100,000 per year per person
 - ii. Up to 25% can be used for business rent, business utilities, and interest on business mortgages that existed prior to 2/15.

- b. Any proceeds spent that do not qualify for forgiveness will be subject to repayment under favorable commercial loan terms
 - i. 1% interest rate
 - ii. First payment deferred for up to 6 months
 - iii. 2-year repayment term
 - iv. No prepayment fees
 - ii. \$60 Billion to replenish Economic Injury Disaster Loan (EIDL)
 - 1. Apply directly through SBA
 - 2. Offers general economic relief to businesses experiencing a temporary loss of revenue
 - 3. SBA is offering an advance of up to \$10,000, which does not have to be repaid
 - 4. PPP loan forgiveness will be reduced by amount of grant if you obtain both loans
 - b. Managing Receivables
 - i. Customers may be slow to pay
 - ii. Contracts will likely be breached
 - 1. Does your contract have a Force Majeure Clause? If so, does it contain language relating to government shutdowns? If so, your Customer may be permitted to delay obligations and you may be permitted to as well.
 - 2. Work with customers to set up payment plans
 - 3. Offer incentives for customers who can pay on time or by certain deadlines (% discounts)

7. Stimulus Loan and Tax Matters to Discuss with your CPA

- a. PPP Loans
 - i. Your CPA may be able to assist you with calculations for loan amount
 - ii. Your CPA may be able to supply you with a spreadsheet to track how you spend your PPP proceeds to simplify loan forgiveness process
- b. States Sales, Use and Service Provider Taxes
 - i. Deadlines for filing with Maine Revenue Services have not changed
 - ii. Retailers may file for an extension, but sales tax must still be remitted on time
 - iii. Check with your CPA to determine if filings still need to be completed if there is no tax to report due to suspension in business operations
- c. Income Tax Extensions
 - i. Federal and Maine Income Tax Filing Deadlines have been extended to 7/15/2020
 - ii. If your 2019 tax information is ready now, you should not wait to send to your CPA
 - iii. Discuss estimated payment deadlines with your CPA. The federal Q1 payment deadline has been extended to July 15, 2020, but not all states have followed suit.

8. *Is your Estate Plan/Business Succession Plan Up to Date?*

- a. We have seen a large increase in requests to complete/update estate plans across the board
 - i. Will
 - ii. Financial Power of Attorney
 - iii. Advance Health Care Directive
- b. Do you have a succession plan for your business?
 - i. Assets owned in your name alone or in your name with a DBA business name can be managed by your Agent named in your Power of Attorney (during life) or your Personal Representative named in your Will (after death)
 - ii. More complicated to manage assets owned by a business through POA's and Wills, so very important to have a succession plan for your business especially if you don't have any business partners.
 - iii. Considerations for Business Succession Planning
 - 1. Do you plan to pass (either by sale or gift, or a combination of the two) the business down to your children?
 - 2. Do you plan to sell the business?
 - 3. What would you want to happen to the business if you die while operating the business?

One Canal Plaza, Suite 400, P.O. Box 15215 | Portland, ME 04112-5215
872 Washington Street | P. O. Box 662 | Bath, ME 04530
One West Lane, Suite B, P.O. Box 1198 | Blue Hill, ME 04614
www.lambertcoffin.com